

### **Remarks**

The Office Action mailed August 1, 2007 has been reviewed. Claims 1-20 remain pending in the application. Claims 1, 8, 15, and 16 have been amended to more clearly recite the inventive concepts therein. For the following reasons, Applicant respectfully submits that claims 1-20 are in condition for allowance. As such, Applicant respectfully requests reconsideration and withdrawal of each rejection such that claims 1-20 may be passed to timely issuance.

### **Rejection of Claims 1-20 under 35 U.S.C. § 103(a)**

In the Office Action mailed August 1, 2007, claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,622,064 (issued to Bartholomew et al.) in view of U.S. Patent No. 6,980,888 (issued to Baker et al.). More specifically, the Office Action stated that it would have been obvious to one of ordinary skill in the art to combine the Bartholomew and Baker references to include every element of claims 1-20. Applicant respectfully disagrees. Nevertheless, to expedite prosecution, independent claims 1, 8, 15, and 16, and therefore claims 2-7, 9-14, and 17-20 which depend therefrom, have been amended to more clearly recite the inventive concepts therein.

Independent claim 1, as amended, is directed to an apparatus for formulating a hair colorant. The apparatus comprises, in pertinent part, means for receiving from the customer desired adjustments to the color, shade, and the brightness of the existing hair color; and means for visually displaying to the customer a plurality of optional

changes to the existing hair color derived from the desired adjustments received from the customer and obtainable through the use of a custom-mixed hair colorant.

Independent claim 8, as amended, is directed to a method operable on a computer for formulating a hair colorant. The method comprises, in pertinent part, receiving from the customer desired adjustments to the color, shade, and brightness of the existing hair color; and visually displaying to the customer a plurality of optional changes to the existing hair color derived from the desired adjustments received from the customer and obtainable through the use of a custom-mixed hair colorant.

Independent claims 15 and 16 are directed to systems for formulating a hair colorant. Each system comprises, in pertinent part, a memory storing instructions to: receive from the customer desired adjustments to the color, shade, and brightness of the existing hair color; and visually display a plurality of optional changes to the existing hair color derived from the desired adjustments received from the customer and obtainable through the use of a custom-mixed hair colorant. The system of claim 16 further includes a touch screen through which a number of the steps are performed.

The Bartholomew reference is directed to a system for custom formulating liquid nail polish. See col. 3, lines 1-2. Bartholomew describes two ways for permitting a user to select a color. First, Bartholomew teaches displaying a plurality of possible pre-determined color choices to a user and permitting the user to select one the pre-determined color choices. See e.g., col. 5, lines 1-6; col. 5, lines 49-54; col. 7, lines 1-4;. Second, Bartholomew teaches matching a color with a preexisting desired color, such as through the use of photospectrometer. See col. 5, lines 7-22.

The Baker reference is directed to a method and apparatus for predicting the result of a coloration of a substrate by a coloring product. More specifically, the Baker reference is directed to a machine for predicting the result of a pre-determined and pre-packaged hair colorant on a user's hair. Baker teaches that the device works as follows: a user selects a desired pre-packaged colorant, and selects a photograph that corresponds in color to the user's existing hair color, such that the device then outputs to the user a prediction of the likely result of the pre-packaged colorant on the user's existing hair color. See e.g., col. 5, line 14 to col. 6, line 37. Further, if the user is not "totally satisfied" with the result, the user may elect to see other results, obtainable using pre-packaged colorants for which data is contained in the device, by selecting either of a "lighter" or "darker" button. See col. 8, lines 4-20.

Applicant submits that neither the Bartholomew reference nor the Baker reference teaches or suggests receiving from the customer desired adjustments to the color, shade, and brightness of the existing hair color. Additionally, neither the Bartholomew reference nor the Baker reference teaches or suggests visually displaying to the customer a plurality of optional changes to the existing hair color which are derived from the desired adjustments received from the customer and obtainable through the use of a custom-mixed hair colorant.

At the outset, the Bartholomew reference is directed to nail polish, the result of which is independent of the substrate to which it is applied. The photospectrometer of the Bartholomew reference would not work with hair, because hair color is dependent on a number of variables such as color, shade, brightness and the like. Further, the Bartholomew reference permits a user to select a desired color or match a color.

Bartholomew is unconcerned with the existing nail color – precisely because it is immaterial. Further, Bartholomew does not teach, suggest, or permit a user to indicate desired adjustments, and derive a plurality of optional changes in response thereto.

The Baker reference suffers similar shortcomings. Baker is limited to predicting the results of pre-packaged hair colorants on a user's existing hair color. Baker does not teach or suggest permitting a user to input desired adjustments to color, shade, and brightness of their existing hair color. Nor does Baker teach or suggest displaying a plurality of optional color changes derived from those desired adjustments. Instead, Baker is limited to displaying the result of a pre-packaged colorant on the user's existing hair color and permitting the user to see the results of other pre-packaged colorants, according only to whether they are "lighter" or "darker."

Applicant therefore respectfully submits that it would not be obvious to one of ordinary skill in the art to combine the Bartholomew and Baker references because no combination thereof would include every element of independent claims 1, 8, 15, and 16, as amended, nor claims 2-7, 9-14, and 17-20 which depend therefrom. In view thereof, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-20 under 35 U.S.C. § 103(a) over Bartholomew in view of Baker, such that they may be passed to timely issuance.

**Conclusion**

The foregoing is intended to fully respond to the Office Action mailed August 1, 2007. However, should the Examiner have any questions concerning any of the remarks set forth herein, Applicant's attorney would welcome a telephonic interview, at the Examiner's convenience, to discuss any matters relating to the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Sorocco', written over a horizontal line.

Douglas J. Sorocco, Reg. No. 43,415  
DUNLAP, CODDING & ROGERS, P.C.  
P.O. Box 16370  
Oklahoma City, Oklahoma 73113  
Telephone: (405) 607-8600  
Facsimile: (405) 607-8686

Attorney for Applicant